



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]

Date:

JUN 15 2000

IN RE: Applicant: [REDACTED]

APPLICATION: [REDACTED]

IN BEHALF OF APPLICANT: [REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

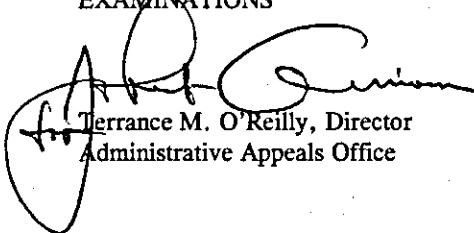
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy


Terrance M. O'Reilly, Director
Administrative Appeals Office

JUN 15 2000 - 04E2111

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States on May 19, 1994 as a nonimmigrant visitor. The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant was convicted of a felony on July 24, 1998 and, therefore, is ineligible for the benefit sought under § 244(c)(2)(B) of the Act, 8 U.S.C. 1254a(c)(2)(B).

On appeal, counsel for the applicant states that the applicant's conviction for forgery falls within the grounds of inadmissibility which may be waived. Counsel states that the application should be reconsidered.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

a. Is a national of a state designated under § 244(b) of the Act;

b. Has been continuously physically present in the United States since January 5, 1999;

c. Has continuously resided in the United States since December 30, 1998;

d. Is admissible as an immigrant;

e. Is not ineligible under 8 C.F.R. 244.4; and

f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

Section 244(c)(2)(A) of the Act, 8 U.S.C. 1254a(c)(2)(A), WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.-In the determination of an

alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1) -

(i) the provisions of paragraphs (5) and (7)(A) of § 212(a) shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of § 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when it otherwise is in the public interest; but

(iii) the Attorney General may not waive-

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) ALIENS INELIGIBLE.-An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

The record indicates that the applicant was convicted of the crime of forgery, a third class felony and crime involving moral turpitude, on July 24, 1998 and was sentenced to a term of 12 months conditional discharge and was fined. The applicant's conviction for committing the crime of forgery renders him

inadmissible under § 212(a)(2)(A)(i) as well as under § 244(c)(2)(B) of the Act. A careful reading of § 244(c)(2)(A)(ii) reveals that a ground of inadmissibility under paragraph 2(A) of § 212(a) of the Act relating to criminals cannot be waived.

The applicant is ineligible for temporary protected status under this section as he has been convicted of a felony, classifiable as a crime involving moral turpitude, committed in the United States, and no waiver is available for such ground of inadmissibility.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.